

AMENDMENT NO. _____ Calendar No. _____

Purpose: To simplify the process for admitting temporary alien agricultural workers under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, to increase access to such workers, and for other purposes.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

H. R. 1268

Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CHAMBLISS
(for himself and Mr. KYL)

Viz:

- 1 On page 231, between lines 3 and 4, insert the fol-
- 2 lowing:

1 **TITLE VII—TEMPORARY**
2 **AGRICULTURAL WORKERS**

3 **SEC. 701. SHORT TITLE.**

4 This title may be cited as the “Temporary Agricul-
5 tural Work Reform Act of 2005”.

6 **Subtitle A—Temporary H-2A**
7 **Workers**

8 **SEC. 711. ADMISSION OF TEMPORARY H-2A WORKERS.**

9 Section 218 of the Immigration and Nationality Act
10 (8 U.S.C. 1188) is amended to read as follows:

11 “ADMISSION OF TEMPORARY H-2A WORKERS

12 “SEC. 218. (a) APPLICATION.—An alien may not be
13 admitted as an H-2A worker unless the employer has filed
14 with the Secretary of Homeland Security a petition attest-
15 ing to the following:

16 “(1) TEMPORARY OR SEASONAL WORK OR
17 SERVICES.—

18 “(A) IN GENERAL.—The agricultural em-
19 ployment for which the H-2A worker or work-
20 ers is or are sought is temporary or seasonal,
21 the number of workers sought, and the wage
22 rate and conditions under which they will be
23 employed.

24 “(B) TEMPORARY OR SEASONAL WORK.—
25 For purposes of subparagraph (A), a worker is

1 employed on a ‘temporary’ or ‘seasonal’ basis if
2 the employment is intended not to exceed 10
3 months.

4 “(2) BENEFITS, WAGE, AND WORKING CONDI-
5 TIONS.—The employer will provide, at a minimum,
6 the benefits, wages, and working conditions required
7 by subsection (m) to all workers employed in the
8 jobs for which the H-2A worker or workers is or are
9 sought and to all other temporary workers in the
10 same occupation at the place of employment.

11 “(3) NONDISPLACEMENT OF UNITED STATES
12 WORKERS.—The employer did not displace and will
13 not displace a United States worker employed by the
14 employer during the period of employment and dur-
15 ing a period of 30 days preceding the period of em-
16 ployment in the occupation at the place of employ-
17 ment for which the employer seeks approval to em-
18 ploy H-2A workers.

19 “(4) RECRUITMENT.—

20 “(A) IN GENERAL.—The employer shall at-
21 test that the employer—

22 “(i) conducted adequate recruitment
23 in the metropolitan statistical area of in-
24 tended employment before filing the attes-
25 tation; and

1 “(ii) was unsuccessful in locating
2 qualified United States workers for the job
3 opportunity for which the certification is
4 sought.

5 “(B) RECRUITMENT.—The adequate re-
6 cruitment requirement under subparagraph (A)
7 is satisfied if the employer—

8 “(i) places a job order with America’s
9 Job Bank Program of the Department of
10 Labor; and

11 “(ii) places a Sunday advertisement in
12 a newspaper of general circulation or an
13 advertisement in an appropriate trade
14 journal or ethnic publication that is likely
15 to be patronized by a potential worker in
16 the area of intended employment.

17 “(C) ADVERTISEMENT CRITERIA.—The ad-
18 vertisement requirement under subparagraph
19 (B)(ii) is satisfied if the advertisement—

20 “(i) names the employer;

21 “(ii) directs applicants to report or
22 send resumes, as appropriate for the occu-
23 pation, to the employer;

24 “(iii) provides a description of the va-
25 cancy that is specific enough to apprise

1 United States workers of the job oppor-
2 tunity for which certification is sought;

3 “(iv) describes the geographic area
4 with enough specificity to apprise appli-
5 cants of any travel requirements and where
6 applicants will likely have to reside to per-
7 form the job;

8 “(v) states the rate of pay, which
9 must equal or exceed the wage paid for the
10 occupation in the area of intended employ-
11 ment; and

12 “(vi) offers wages, terms, and condi-
13 tions of employment, which are at least as
14 favorable as those offered to the alien.

15 “(5) OFFERS TO UNITED STATES WORKERS.—
16 The employer has offered or will offer the job for
17 which the nonimmigrant is, or the nonimmigrants
18 are, sought to any eligible United States worker who
19 applies and is equally or better qualified for the job
20 and who will be available at the time and place of
21 need.

22 “(6) PROVISION OF INSURANCE.—If the job for
23 which the nonimmigrant is, or the nonimmigrants
24 are, sought is not covered by State workers’ com-
25 pensation law, the employer will provide, at no cost

1 to the worker, insurance covering injury and disease
2 arising out of, and in the course of, the worker's em-
3 ployment which will provide benefits at least equal to
4 those provided under the State workers' compensa-
5 tion law for comparable employment.

6 “(7) STRIKE OR LOCKOUT.—The specific job
7 opportunity for which the employer is requesting an
8 H-2A worker is not vacant because the former occu-
9 pant is on strike or being locked out in the course
10 of a labor dispute.

11 “(8) PREVIOUS VIOLATIONS.—The employer
12 has not, during the previous 5-year period, employed
13 H-2A workers and knowingly violated a material
14 term or condition of approval with respect to the
15 employment of domestic or nonimmigrant workers,
16 as determined by the Secretary of Labor after notice
17 and opportunity for a hearing.

18 “(b) PUBLICATION.—The employer shall make avail-
19 able for public examination, within 1 working day after
20 the date on which a petition under this section is filed,
21 at the employer's principal place of business or worksite,
22 a copy of each such petition (and such accompanying doc-
23 uments as are necessary).

24 “(c) LIST.—The Secretary of Labor shall compile, on
25 a current basis, a list (by employer) of the petitions filed

1 under subsection (a). Such list shall include the wage rate,
2 number of aliens sought, period of intended employment,
3 and date of need. The Secretary of Labor shall make such
4 list available for public examination in Washington, Dis-
5 trict of Columbia.

6 “(d) SPECIAL RULES FOR CONSIDERATION OF PETI-
7 TIONS.—The following rules shall apply in the case of the
8 filing and consideration of a petition under subsection (a):

9 “(1) DEADLINE FOR FILING APPLICATIONS.—
10 The Secretary of Homeland Security may not re-
11 quire that the petition be filed more than 28 days
12 before the first date the employer requires the labor
13 or services of the H-2A worker or workers.

14 “(2) ISSUANCE OF APPROVAL.—Unless the Sec-
15 retary of Homeland Security finds that the petition
16 is incomplete or obviously inaccurate, the Secretary
17 of Homeland Security shall provide a decision within
18 7 days of the date of the filing of the petition.

19 “(e) ROLES OF AGRICULTURAL ASSOCIATIONS.—

20 “(1) PERMITTING FILING BY AGRICULTURAL
21 ASSOCIATIONS.—A petition to hire an alien as a
22 temporary agricultural worker may be filed by an as-
23 sociation of agricultural producers which use agricul-
24 tural services.

1 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
2 EMPLOYERS.—If an association is a joint or sole em-
3 ployer of temporary agricultural workers, such work-
4 ers may be transferred among its producer members
5 to perform agricultural services of a temporary or
6 seasonal nature for which the petition was approved.

7 “(3) STATEMENT OF LIABILITY.—The applica-
8 tion form shall include a clear statement explaining
9 the liability under this section of an employer who
10 places an H-2A worker with another H-2A em-
11 ployer if the other employer displaces a United
12 States worker in violation of the condition described
13 in subsection (a)(7).

14 “(4) TREATMENT OF VIOLATIONS.—

15 “(A) MEMBER’S VIOLATION DOES NOT
16 NECESSARILY DISQUALIFY ASSOCIATION OR
17 OTHER MEMBERS.—If an individual producer
18 member of a joint employer association is deter-
19 mined to have committed an act that is in viola-
20 tion of the conditions for approval with respect
21 to the member’s petition, the denial shall apply
22 only to that member of the association unless
23 the Secretary of Labor determines that the as-
24 sociation or other member participated in, had

1 knowledge of, or had reason to know of the vio-
2 lation.

3 “(B) ASSOCIATION’S VIOLATION DOES NOT
4 NECESSARILY DISQUALIFY MEMBERS.—

5 “(i) JOINT EMPLOYER.—If an associa-
6 tion representing agricultural producers as
7 a joint employer is determined to have
8 committed an act that is in violation of the
9 conditions for approval with respect to the
10 association’s petition, the denial shall apply
11 only to the association and does not apply
12 to any individual producer member of the
13 association, unless the Secretary of Labor
14 determines that the member participated
15 in, had knowledge of, or had reason to
16 know of the violation.

17 “(ii) SOLE EMPLOYER.—If an associa-
18 tion of agricultural producers approved as
19 a sole employer is determined to have com-
20 mitted an act that is in violation of the
21 conditions for approval with respect to the
22 association’s petition, no individual pro-
23 ducer member of such association may be
24 the beneficiary of the services of temporary
25 alien agricultural workers admitted under

1 this section in the commodity and occupa-
2 tion in which such aliens were employed by
3 the association which was denied approval
4 during the period such denial is in force,
5 unless such producer member employs such
6 aliens in the commodity and occupation in
7 question directly or through an association
8 which is a joint employer of such workers
9 with the producer member.

10 “(f) EXPEDITED ADMINISTRATIVE APPEALS OF CER-
11 TAIN DETERMINATIONS.—Regulations shall provide for an
12 expedited procedure for the review of a denial of approval
13 under this section, or at the applicant’s request, for a de
14 novo administrative hearing respecting the denial.

15 “(g) MISCELLANEOUS PROVISIONS.—

16 “(1) ENDORSEMENT OF DOCUMENTS.—The
17 Secretary of Homeland Security shall provide for the
18 endorsement of entry and exit documents of non-
19 immigrants described in section 101(a)(15)(H)(ii)(a)
20 as may be necessary to carry out this section and to
21 provide notice for purposes of section 274A.

22 “(2) PREEMPTION OF STATE LAWS.—The pro-
23 visions of subsections (a) and (c) of section 214 and
24 the provisions of this section preempt any State or

1 local law regulating admissibility of nonimmigrant
2 workers.

3 “(3) FEES.—

4 “(A) IN GENERAL.—The Secretary of
5 Homeland Security may require, as a condition
6 of approving the petition, the payment of a fee
7 in accordance with subparagraph (B) to recover
8 the reasonable costs of processing petitions.

9 “(B) AMOUNTS.—

10 “(i) EMPLOYER.—The fee for each
11 employer that receives a temporary alien
12 agricultural labor certification shall be
13 equal to \$100 plus \$10 for each job oppor-
14 tunity for H-2A workers certified, pro-
15 vided that the fee to an employer for each
16 temporary alien agricultural labor certifi-
17 cation received shall not exceed \$1,000.

18 “(ii) JOINT EMPLOYER ASSOCIA-
19 TION.—In the case of a joint employer as-
20 sociation that receives a temporary alien
21 agricultural labor certification, each em-
22 ployer-member receiving such certification
23 shall pay a fee equal to \$100 plus \$10 for
24 each job opportunity for H-2A workers
25 certified, provided that the fee to an em-

1 ployer for each temporary alien agricul-
2 tural labor certification received shall not
3 exceed \$1,000. The joint employer associa-
4 tion shall not be charged a separate fee.

5 “(C) PAYMENTS.—The fees collected under
6 this paragraph shall be paid by check or money
7 order made payable to the ‘Department of
8 Homeland Security’. In the case of employers of
9 H–2A workers that are members of a joint em-
10 ployer association applying on their behalf, the
11 aggregate fees for all employers of H–2A work-
12 ers under the petition may be paid by 1 check
13 or money order.

14 “(D) INFLATION ADJUSTMENT.—In the
15 case of any calendar year beginning after 2005,
16 each dollar amount in subparagraph (B) may
17 be increased by an amount equal to—

18 “(i) such dollar amount; multiplied by

19 “(ii) the percentage (if any) by which
20 the average of the Consumer Price Index
21 for all urban consumers (United States
22 city average) for the 12-month period end-
23 ing with August of the preceding calendar
24 year exceeds such average for the 12-
25 month period ending with August 2004.

1 “(h) FAILURE TO MEET CONDITIONS.—If the Sec-
2 retary of Labor finds, after notice and opportunity for a
3 hearing, a failure to meet a condition of subsection (a),
4 or a material misrepresentation of fact in a petition under
5 subsection (a)—

6 “(1) the Secretary of Labor shall notify the
7 Secretary of Homeland Security of such finding and
8 may, in addition, impose such other administrative
9 remedies (including civil money penalties in an
10 amount not to exceed \$1,000 per violation) as the
11 Secretary of Labor determines to be appropriate;
12 and

13 “(2) the Secretary of Homeland Security may
14 disqualify the employer from the employment of H-
15 2A workers for a period of 1 year.

16 “(i) WILLFUL FAILURES AND WILLFUL MISREPRE-
17 SENTATIONS.—If the Secretary of Labor finds, after no-
18 tice and opportunity for a hearing, a willful failure to meet
19 a material condition of subsection (a) or a willful misrepre-
20 sentation of a material fact in a petition under subsection
21 (a)—

22 “(1) the Secretary of Labor shall notify the
23 Secretary of Homeland Security of such finding and
24 may, in addition, impose such other administrative
25 remedies (including civil money penalties in an

1 amount not to exceed \$5,000 per violation) as the
2 Secretary of Labor determines to be appropriate;

3 “(2) the Secretary of Homeland Security may
4 disqualify the employer from the employment of H-
5 2A workers for a period of 2 years;

6 “(3) for a second violation, the Secretary of
7 Homeland Security may disqualify the employer
8 from the employment of H-2A workers for a period
9 of 5 years; and

10 “(4) for a third violation, the Secretary of
11 Homeland Security may permanently disqualify the
12 employer from the employment of H-2A workers.

13 “(j) DISPLACEMENT OF UNITED STATES WORK-
14 ERS.—If the Secretary of Labor finds, after notice and
15 opportunity for a hearing, a willful failure to meet a mate-
16 rial condition of subsection (a) or a willful misrepresenta-
17 tion of a material fact in a petition under subsection (a),
18 in the course of which failure or misrepresentation the em-
19 ployer displaced a United States worker employed by the
20 employer during the period of employment on the employ-
21 er’s petition under subsection (a) or during the period of
22 30 days preceding such period of employment—

23 “(1) the Secretary of Labor shall notify the
24 Secretary of Homeland Security of such finding and
25 may, in addition, impose such other administrative

1 remedies (including civil money penalties in an
2 amount not to exceed \$15,000 per violation) as the
3 Secretary of Labor determines to be appropriate;

4 “(2) the Secretary of Homeland Security may
5 disqualify the employer from the employment of H–
6 2A workers for a period of 5 years; and

7 “(3) for a second violation, the Secretary of
8 Homeland Security may permanently disqualify the
9 employer from the employment of H–2A workers.

10 “(k) LIMITATIONS ON CIVIL MONEY PENALTIES.—
11 The Secretary of Labor shall not impose total civil money
12 penalties with respect to a petition under subsection (a)
13 in excess of \$90,000.

14 “(l) FAILURES TO PAY WAGES OR REQUIRED BENE-
15 FITS.—If the Secretary of Labor finds, after notice and
16 opportunity for a hearing, that the employer has failed to
17 pay the wages, or provide the housing allowance, transpor-
18 tation, subsistence reimbursement, or guarantee of em-
19 ployment required under subsection (a)(2), the Secretary
20 of Labor shall assess payment of back wages, or other re-
21 quired benefits, due any United States worker or H–2A
22 worker employed by the employer in the specific employ-
23 ment in question. The back wages or other required bene-
24 fits under subsection (a)(2) shall be equal to the difference

1 between the amount that should have been paid and the
2 amount that actually was paid to such worker.

3 “(m) MINIMUM BENEFITS, WAGES, AND WORKING
4 CONDITIONS.—

5 “(1) PREFERENTIAL TREATMENT OF ALIENS
6 PROHIBITED.—

7 “(A) IN GENERAL.—Employers seeking to
8 hire United States workers shall offer the
9 United States workers not less than the same
10 benefits, wages, and working conditions that the
11 employer is offering, intends to offer, or will
12 provide to H-2A workers. Conversely, no job
13 offer may impose on United States workers any
14 restrictions or obligations which will not be im-
15 posed on the employer’s H-2A workers.

16 “(B) INTERPRETATIONS AND DETERMINA-
17 TIONS.—While benefits, wages, and other terms
18 and conditions of employment specified in this
19 subsection are required to be provided in con-
20 nection with employment under this section,
21 every interpretation and determination made
22 under this Act or under any other law, regula-
23 tion, or interpretative provision regarding the
24 nature, scope, and timing of the provision of
25 these and any other benefits, wages, and other

1 terms and conditions of employment shall be
2 made in conformance with the governing prin-
3 ciples that the services of workers to their em-
4 ployers and the employment opportunities af-
5 farded to workers by their employers, including
6 those employment opportunities that require
7 United States workers or H-2A workers to
8 travel or relocate in order to accept or perform
9 employment, mutually benefit such workers, as
10 well as their families, and employers, principally
11 benefitting neither, and that employment oppor-
12 tunities within the United States further benefit
13 the United States economy as a whole and
14 should be encouraged.

15 “(2) REQUIRED WAGES.—

16 “(A) An employer applying for workers
17 under subsection (a) shall offer to pay, and
18 shall pay, all workers in the occupation for
19 which the employer has applied for workers, not
20 less than the prevailing wage.

21 “(B) In complying with subparagraph (A),
22 an employer may request and obtain a pre-
23 vailing wage determination from the State em-
24 ployment security agency.

1 “(C) In lieu of the procedure described in
2 subparagraph (B), an employer may rely on
3 other wage information, including a survey of
4 the prevailing wages of workers in the occupa-
5 tion in the area of intended employment that
6 has been conducted or funded by the employer
7 or a group of employers, that meets criteria
8 specified by the Secretary of Labor in regula-
9 tions.

10 “(D) An employer who obtains such pre-
11 vailing wage determination, or who relies on a
12 qualifying survey of prevailing wages, and who
13 pays the wage determined to be prevailing, shall
14 be considered to have complied with the re-
15 quirement of subparagraph (A).

16 “(E) No worker shall be paid less than the
17 greater of the prevailing wage or the applicable
18 State minimum wage.

19 “(3) REQUIREMENT TO PROVIDE HOUSING OR A
20 HOUSING ALLOWANCE.—

21 “(A) IN GENERAL.—An employer applying
22 for workers under subsection (a) shall offer to
23 provide housing at no cost to all workers in job
24 opportunities for which the employer has ap-
25 plied under that section and to all other work-

1 ers in the same occupation at the place of em-
2 ployment, whose place of residence is beyond
3 normal commuting distance.

4 “(B) TYPE OF HOUSING.—In complying
5 with subparagraph (A), an employer may, at
6 the employer’s election, provide housing that
7 meets applicable Federal standards for tem-
8 porary labor camps or secure housing that
9 meets applicable local standards for rental or
10 public accommodation housing, or other sub-
11 stantially similar class of habitation, or in the
12 absence of applicable local standards, State
13 standards for rental or public accommodation
14 housing or other substantially similar class of
15 habitation. In the absence of applicable State or
16 local standards, Federal temporary labor camp
17 standards shall apply.

18 “(C) CERTIFICATE OF INSPECTION.—Prior
19 to any occupation by a worker in housing de-
20 scribed in subparagraph (B), the employer shall
21 submit a certificate of inspection by an ap-
22 proved Federal or State agency to the Secretary
23 of Labor.

24 “(D) WORKERS ENGAGED IN THE RANGE
25 PRODUCTION OF LIVESTOCK.—The Secretary of

1 Labor shall issue regulations that address the
2 specific requirements for the provision of hous-
3 ing to workers engaged in the range production
4 of livestock.

5 “(E) LIMITATION.—Nothing in this para-
6 graph shall be construed to require an employer
7 to provide or secure housing for persons who
8 were not entitled to such housing under the
9 temporary labor certification regulations in ef-
10 fect on June 1, 1986.

11 “(F) HOUSING ALLOWANCE AS ALTER-
12 NATIVE.—

13 “(i) IN GENERAL.—The employer may
14 provide a reasonable housing allowance in
15 lieu of offering housing under subpara-
16 graph (A) if the requirement under clause
17 (v) is satisfied.

18 “(ii) ASSISTANCE TO LOCATE HOUS-
19 ING.—Upon the request of a worker seek-
20 ing assistance in locating housing, the em-
21 ployer shall make a good-faith effort to as-
22 sist the worker in locating housing in the
23 area of intended employment.

24 “(iii) LIMITATION.—A housing allow-
25 ance may not be used for housing which is

1 owned or controlled by the employer. An
2 employer who offers a housing allowance to
3 a worker, or assists a worker in locating
4 housing which the worker occupies, pursu-
5 ant to this clause shall not be deemed a
6 housing provider under section 203 of the
7 Migrant and Seasonal Agricultural Worker
8 Protection Act (29 U.S.C. 1823) solely by
9 virtue of providing such housing allowance.

10 “(iv) REPORTING REQUIREMENT.—
11 The employer must provide the Secretary
12 of Labor with a list of the names of all
13 workers assisted under this subparagraph
14 and the local address of each such worker.

15 “(v) CERTIFICATION.—The require-
16 ment of this clause is satisfied if the Gov-
17 ernor of the State certifies to the Secretary
18 of Labor that there is adequate housing
19 available in the area of intended employ-
20 ment for migrant farm workers, and H-2A
21 workers, who are seeking temporary hous-
22 ing while employed at farm work. Such
23 certification shall expire after 3 years un-
24 less renewed by the Governor of the State.

25 “(vi) AMOUNT OF ALLOWANCE.—

1 “(I) NONMETROPOLITAN COUN-
2 TIES.—If the place of employment of
3 the workers provided an allowance
4 under this subparagraph is a non-
5 metropolitan county, the amount of
6 the housing allowance under this sub-
7 paragraph shall be equal to the state-
8 wide average fair market rental for
9 existing housing for nonmetropolitan
10 counties for the State, as established
11 by the Secretary of Housing and
12 Urban Development pursuant to sec-
13 tion 8(c) of the United States Hous-
14 ing Act of 1937 (42 U.S.C. 1437f(c)),
15 based on a 2-bedroom dwelling unit
16 and an assumption of 2 persons per
17 bedroom.

18 “(II) METROPOLITAN COUN-
19 TIES.—If the place of employment of
20 the workers provided an allowance
21 under this paragraph is in a metro-
22 politan county, the amount of the
23 housing allowance under this subpara-
24 graph shall be equal to the statewide
25 average fair market rental for existing

1 housing for metropolitan counties for
2 the State, as established by the Sec-
3 retary of Housing and Urban Devel-
4 opment pursuant to section 8(c) of
5 the United States Housing Act of
6 1937 (42 U.S.C. 1437f(c)), based on
7 a 2-bedroom dwelling unit and an as-
8 sumption of 2 persons per bedroom.

9 “(G) EXEMPTION.—An employer applying
10 for workers under subsection (a) whose primary
11 job site is located 150 miles or less from the
12 United States border shall not be required to
13 provide housing or a housing allowance.

14 “(4) REIMBURSEMENT OF TRANSPORTATION.—

15 “(A) TO PLACE OF EMPLOYMENT.—

16 “(i) IN GENERAL.—A worker who
17 completes 50 percent of the period of em-
18 ployment of the job opportunity for which
19 the worker was hired, measured from the
20 worker’s first day of work in such employ-
21 ment, shall be reimbursed by the employer
22 for the cost of the worker’s transportation
23 and subsistence from the place from which
24 the worker was approved to enter the
25 United States to work for the employer (or

1 place of last employment, if the worker
2 traveled from such place) to the place of
3 employment by the employer.

4 “(ii) OTHER FEES.—The employer
5 shall not be required to reimburse visa,
6 passport, consular, or international border-
7 crossing fees or any other fees associated
8 with the worker’s lawful admission into the
9 United States to perform employment that
10 may be incurred by the worker.

11 “(iii) TIMELY REIMBURSEMENT.—Re-
12 imbursement to the worker of expenses for
13 the cost of the worker’s transportation and
14 subsistence to the place of employment
15 shall be considered timely if such reim-
16 bursement is made not later than the
17 worker’s first regular payday after the
18 worker completes 50 percent of the period
19 of employment of the job opportunity as
20 provided under this paragraph.

21 “(B) FROM PLACE OF EMPLOYMENT.—A
22 worker who completes the period of employment
23 for the job opportunity involved shall be reim-
24 bursed by the employer for the cost of the
25 worker’s transportation and subsistence from

1 the place from which the worker was approved
2 to enter the United States to work for the em-
3 ployer.

4 “(C) LIMITATION.—

5 “(i) AMOUNT OF REIMBURSEMENT.—

6 Except as provided in clause (ii), the
7 amount of reimbursement provided under
8 subparagraph (A) or (B) to a worker or
9 alien shall not exceed the lesser of—

10 “(I) the actual cost to the worker
11 or alien of the transportation and sub-
12 sistence involved; or

13 “(II) the most economical and
14 reasonable common carrier transpor-
15 tation charges and subsistence costs
16 for the distance involved.

17 “(ii) DISTANCE TRAVELED.—No reim-
18 bursement under subparagraph (A) or (B)
19 shall be required if the distance traveled is
20 100 miles or less or if the worker is not re-
21 siding in employer-provided housing or
22 housing secured through an allowance as
23 provided in paragraph (3).

24 “(D) EARLY TERMINATION.—If the worker
25 is laid off or employment is terminated for con-

1 tract impossibility (as described in paragraph
2 (5)(D)) before the anticipated ending date of
3 employment, the employer shall provide the
4 transportation and subsistence required by sub-
5 paragraph (B) and, notwithstanding whether
6 the worker has completed 50 percent of the pe-
7 riod of employment, shall provide the transpor-
8 tation reimbursement required by subparagraph
9 (A).

10 “(E) TRANSPORTATION BETWEEN LIVING
11 QUARTERS AND WORKSITE.—The employer
12 shall provide transportation between the work-
13 er’s living quarters (such as housing provided
14 by the employer pursuant to paragraph (3), in-
15 cluding housing provided through a housing al-
16 lowance) and the employer’s worksite without
17 cost to the worker, and such transportation will
18 be in accordance with applicable laws and regu-
19 lations.

20 “(5) GUARANTEE OF EMPLOYMENT.—

21 “(A) OFFER TO WORKER.—The employer
22 shall guarantee to offer the worker employment
23 for the hourly equivalent of at least 75 percent
24 of the work days of the total period of employ-
25 ment, beginning with the first work day after

1 the arrival of the worker at the place of employ-
2 ment and ending on the expiration date speci-
3 fied in the job offer. For purposes of this sub-
4 paragraph, the hourly equivalent means the
5 number of hours in the work days as stated in
6 the job offer and shall exclude the worker's
7 Sabbath and Federal holidays. If the employer
8 affords the United States or H-2A worker less
9 employment than that required under this sub-
10 paragraph, the employer shall pay such worker
11 the amount which the worker would have
12 earned had the worker, in fact, worked for the
13 guaranteed number of hours.

14 “(B) FAILURE TO WORK.—Any hours
15 which the worker fails to work, up to a max-
16 imum of the number of hours specified in the
17 job offer for a work day, when the worker has
18 been offered an opportunity to do so, and all
19 hours of work actually performed (including vol-
20 untary work in excess of the number of hours
21 specified in the job offer in a work day, on the
22 worker's Sabbath, or on Federal holidays) may
23 be counted by the employer in calculating
24 whether the period of guaranteed employment
25 has been met.

1 “(C) ABANDONMENT OF EMPLOYMENT;
2 TERMINATION FOR CAUSE.—If the worker vol-
3 untarily abandons employment before the end
4 of the contract period, or is terminated for
5 cause, the worker is not entitled to the 75 per-
6 cent guarantee described in subparagraph (A).

7 “(D) CONTRACT IMPOSSIBILITY.—If, be-
8 fore the expiration of the period of employment
9 specified in the job offer, the services of the
10 worker are no longer required for reasons be-
11 yond the control of the employer due to any
12 form of natural disaster (including a flood, hur-
13 ricane, freeze, earthquake, fire, or drought),
14 plant or animal disease, pest infestation, or reg-
15 ulatory action, before the employment guar-
16 antee in subparagraph (A) is fulfilled, the em-
17 ployer may terminate the worker’s employment.
18 In the event of such termination, the employer
19 shall fulfill the employment guarantee in sub-
20 paragraph (A) for the work days that have
21 elapsed from the first work day after the arrival
22 of the worker to the termination of employ-
23 ment. In such cases, the employer will make ef-
24 forts to transfer the United States worker to

1 other comparable employment acceptable to the
2 worker.

3 “(n) PETITIONING FOR ADMISSION.—An employer,
4 or an association acting as an agent or joint employer for
5 its members, that seeks the admission into the United
6 States of an H-2A worker must file a petition with the
7 Secretary of Homeland Security. The petition shall include
8 the attestations for the certification described in section
9 101(a)(15)(H)(ii)(a).

10 “(o) EXPEDITED ADJUDICATION BY THE SEC-
11 RETARY.—The Secretary of Homeland Security—

12 “(1) shall establish a procedure for expedited
13 adjudication of petitions filed under subsection (n);
14 and

15 “(2) not later than 7 working days after such
16 filing shall, by fax, cable, or other means assuring
17 expedited delivery transmit a copy of notice of action
18 on the petition—

19 “(A) to the petitioner; and

20 “(B) in the case of approved petitions, to
21 the appropriate immigration officer at the port
22 of entry or United States consulate where the
23 petitioner has indicated that the alien bene-
24 ficiary or beneficiaries will apply for a visa or
25 admission to the United States.

1 “(p) DISQUALIFICATION.—

2 “(1) Subject to paragraph (2), an alien shall be
3 considered inadmissible to the United States and in-
4 eligible for nonimmigrant status under section
5 101(a)(15)(H)(ii)(a) if the alien has, at any time
6 during the past 5 years, violated a term or condition
7 of admission into the United States as a non-
8 immigrant, including overstaying the period of au-
9 thorized admission.

10 “(2) WAIVERS.—

11 “(A) IN GENERAL.—An alien outside the
12 United States, and seeking admission under
13 section 101(a)(15)(H)(ii)(a), shall not be
14 deemed inadmissible under such section by rea-
15 son of paragraph (1) or section 212(a)(9)(B) if
16 the previous violation occurred on or before
17 April 1, 2005.

18 “(B) LIMITATION.—In any case in which
19 an alien is admitted to the United States upon
20 having a ground of inadmissibility waived under
21 subparagraph (A), such waiver shall be consid-
22 ered to remain in effect unless the alien again
23 violates a material provision of this section or
24 otherwise violates a term or condition of admis-

1 sion into the United States as a nonimmigrant,
2 in which case such waiver shall terminate.

3 “(q) ABANDONMENT OF EMPLOYMENT.—

4 “(1) IN GENERAL.—An alien admitted or pro-
5 vided status under section 101(a)(15)(H)(ii)(a) who
6 abandons the employment which was the basis for
7 such admission or status shall be considered to have
8 failed to maintain nonimmigrant status as an H-2A
9 worker and shall depart the United States or be sub-
10 ject to removal under section 237(a)(1)(C)(i).

11 “(2) REPORT BY EMPLOYER.—The employer
12 (or association acting as agent for the employer)
13 shall notify the Secretary of Homeland Security
14 within 7 days of an H-2A worker’s having pre-
15 maturely abandoned employment.

16 “(3) REMOVAL BY THE SECRETARY.—The Sec-
17 retary of Homeland Security shall promptly remove
18 from the United States any H-2A worker who vio-
19 lates any term or condition of the worker’s non-
20 immigrant status.

21 “(4) VOLUNTARY TERMINATION.—Notwith-
22 standing paragraph (1), an alien may voluntarily
23 terminate his or her employment if the alien prompt-
24 ly departs the United States upon termination of
25 such employment.

1 “(r) REPLACEMENT OF ALIEN.—

2 “(1) IN GENERAL.—Upon presentation of the
3 notice to the Secretary of Homeland Security re-
4 quired by subsection (q)(2), the Secretary of State
5 shall promptly issue a visa to, and the Secretary of
6 Homeland Security shall admit into the United
7 States, an eligible alien designated by the employer
8 to replace an H-2A worker who abandons or pre-
9 maturely terminates employment.

10 “(2) CONSTRUCTION.—Nothing in this sub-
11 section shall limit any preference required to be ac-
12 corded United States workers under any other provi-
13 sion of this Act.

14 “(s) IDENTIFICATION DOCUMENT.—

15 “(1) IN GENERAL.—The Department of Home-
16 land Security shall provide each alien authorized to
17 be admitted under section 101(a)(15)(H)(ii)(a) with
18 a single machine-readable, tamper-resistant, and
19 counterfeit-resistant document that—

20 “(A) authorizes the alien’s entry into the
21 United States; and

22 “(B) serves, for the appropriate period, as
23 an employment eligibility document.

1 “(2) REQUIREMENTS.—No identification and
2 employment eligibility document may be issued
3 which does not meet the following requirements:

4 “(A) The document shall be capable of re-
5 liably determining whether—

6 “(i) the individual with the identifica-
7 tion and employment eligibility document
8 whose eligibility is being verified is in fact
9 eligible for employment;

10 “(ii) the individual whose eligibility is
11 being verified is claiming the identity of
12 another person; and

13 “(iii) the individual whose eligibility is
14 being verified is authorized to be admitted
15 into, and employed in, the United States
16 as an H-2A worker.

17 “(B) The document shall—

18 “(i) be compatible with other data-
19 bases of the Secretary of Homeland Secu-
20 rity for the purpose of excluding aliens
21 from benefits for which they are not eligi-
22 ble and determining whether the alien is
23 unlawfully present in the United States;
24 and

1 “(ii) be compatible with law enforce-
2 ment databases to determine if the alien
3 has been convicted of criminal offenses.

4 “(t) EXTENSION OF STAY OF H-2A WORKERS IN
5 THE UNITED STATES.—

6 “(1) EXTENSION OF STAY.—

7 “(A) IN GENERAL.—An employer may seek
8 up to 2 10-month extensions under this sub-
9 section.

10 “(B) PETITION.—If an employer seeks to
11 employ an H-2A worker who is lawfully present
12 in the United States, the petition filed by the
13 employer or an association pursuant to sub-
14 section (n) shall request an extension of the
15 alien’s stay.

16 “(C) COMMENCEMENT; MAXIMUM PE-
17 RIOD.—An extension of stay under this sub-
18 section—

19 “(i) may only commence upon the ter-
20 mination of the H-2A worker’s contract
21 with an employer; and

22 “(ii) may not exceed 10 months unless
23 the employer files a written request for up
24 to an additional 30 days accompanied by
25 justification that the need for such addi-

1 tional time is necessitated by adverse
2 weather conditions, acts of God, or eco-
3 nomic hardship beyond the control of the
4 employer.

5 “(D) FUTURE ELIGIBILITY.—At the con-
6 clusion of 3 10-month employment periods au-
7 thorized under this section, the alien so em-
8 ployed may not be employed in the United
9 States as an H-2A worker until the alien has
10 returned to the alien’s country of nationality or
11 country of last residence for not less than 6
12 months.

13 “(2) WORK AUTHORIZATION UPON FILING PE-
14 TITION FOR EXTENSION OF STAY.—

15 “(A) IN GENERAL.—An alien who is law-
16 fully present in the United States may com-
17 mence or continue the employment described in
18 a petition under paragraph (1) on the date on
19 which the petition is filed. The employer shall
20 provide a copy of the employer’s petition to the
21 alien, who shall keep the petition with the
22 alien’s identification and employment eligibility
23 document, as evidence that the petition has
24 been filed and that the alien is authorized to
25 work in the United States.

1 “(B) APPROVAL.—Upon approval of a pe-
2 tition for an extension of stay or change in the
3 alien’s authorized employment, the Secretary of
4 Homeland Security shall provide a new or up-
5 dated employment eligibility document to the
6 alien indicating the new validity date, after
7 which the alien is not required to retain a copy
8 of the petition.

9 “(C) DEFINITION.—In this paragraph, the
10 term ‘file’ means sending the petition by cer-
11 tified mail via the United States Postal Service,
12 return receipt requested, or delivered by guar-
13 anteed commercial delivery which will provide
14 the employer with a documented acknowledg-
15 ment of the date of receipt of the petition.

16 “(u) SPECIAL RULE FOR ALIENS EMPLOYED AS
17 SHEEPHERDERS, GOATHERDERS, OR DAIRY WORKERS.—
18 Notwithstanding any other provision of this section, an
19 alien admitted under section 101(a)(15)(H)(ii)(a) for em-
20 ployment as a shepherd, goatherder, or dairy worker
21 may be admitted for a period of up to 2 years.

22 “(v) DEFINITIONS.—For purposes of this section:

23 “(1) AREA OF EMPLOYMENT.—The term ‘area
24 of employment’ means the area within normal com-
25 muting distance of the worksite or physical location

1 where the work of the H-2A worker is or will be
2 performed. If such worksite or location is within a
3 Metropolitan Statistical Area, any place within such
4 area is deemed to be within the area of employment.

5 “(2) ELIGIBLE INDIVIDUAL.—The term ‘eligible
6 individual’ means, with respect to employment, an
7 individual who is not an unauthorized alien (as de-
8 fined in section 274A(h)(3)) with respect to that em-
9 ployment.

10 “(3) DISPLACE.—In the case of a petition with
11 respect to 1 or more H-2A workers by an employer,
12 the employer is considered to ‘displace’ a United
13 States worker from a job if the employer lays off the
14 worker from a job that is essentially the equivalent
15 of the job for which the H-2A worker or workers is
16 or are sought. A job shall not be considered to be
17 essentially equivalent of another job unless it in-
18 volves essentially the same responsibilities, was held
19 by a United States worker with substantially equiva-
20 lent qualifications and experience, and is located in
21 the same area of employment as the other job.

22 “(4) H-2A WORKER.—The term ‘H-2A worker’
23 means a nonimmigrant described in section
24 101(a)(15)(H)(ii)(a).

25 “(5) LAYS OFF.—

1 “(A) IN GENERAL.—The term ‘lays off’,
2 with respect to a worker—

3 “(i) means to cause the worker’s loss
4 of employment, other than through a dis-
5 charge for inadequate performance, viola-
6 tion of workplace rules, cause, voluntary
7 departure, voluntary retirement, or the ex-
8 piration of a grant or contract (other than
9 a temporary employment contract entered
10 into in order to evade a condition described
11 in paragraph (3) or (7) of subsection (a);
12 but

13 “(ii) does not include any situation in
14 which the worker is offered, as an alter-
15 native to such loss of employment, a simi-
16 lar employment opportunity with the same
17 employer (or, in the case of a placement of
18 a worker with another employer under sub-
19 section (a)(7), with either employer de-
20 scribed in such subsection) at equivalent or
21 higher compensation and benefits than the
22 position from which the employee was dis-
23 charged, regardless of whether or not the
24 employee accepts the offer.

1 “(B) CONSTRUCTION.—Nothing in this
2 paragraph is intended to limit an employee’s
3 rights under a collective bargaining agreement
4 or other employment contract.

5 “(6) PREVAILING WAGE.—The term ‘prevailing
6 wage’ means, with respect to an agricultural occupa-
7 tion in an area of intended employment, the rate of
8 wages that includes the 51st percentile of employees
9 with similar experience and qualifications in the ag-
10 ricultural occupation in the area of intended employ-
11 ment, expressed in terms of the prevailing method of
12 pay for the occupation in the area of intended em-
13 ployment.

14 “(7) UNITED STATES WORKER.—The term
15 ‘United States worker’ means any worker, whether
16 a United States citizen or national, a lawfully admit-
17 ted permanent resident alien, or any other alien au-
18 thorized to work in the relevant job opportunity
19 within the United States, except—

20 “(A) an alien admitted or otherwise pro-
21 vided status under section 101(a)(15)(H)(ii)(a);
22 and

23 “(B) an alien provided status under sec-
24 tion 220.”.

1 **SEC. 712. LEGAL ASSISTANCE PROVIDED BY THE LEGAL**
2 **SERVICES CORPORATION.**

3 Section 305 of the Immigrant Reform and Control
4 Act of 1986 (8 U.S.C. 1101 note) is amended—

5 (1) by striking “A nonimmigrant” and inserting
6 the following:

7 “(a) IN GENERAL.—A nonimmigrant”; and

8 (2) by adding at the end the following:

9 “(b) LEGAL ASSISTANCE.—The Legal Services Cor-
10 poration may not provide legal assistance for or on behalf
11 of any alien, and may not provide financial assistance to
12 any person or entity that provides legal assistance for or
13 on behalf of any alien, unless the alien—

14 “(1) is present in the United States at the time
15 the legal assistance is provided; and

16 “(2) is an alien to whom subsection (a) ap-
17 plies.”

18 “(c) REQUIRED MEDIATION.—No party may bring a
19 civil action for damages on behalf of a nonimmigrant de-
20 scribed in section 101(a)(15)(H)(ii)(a) of the Immigration
21 and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) or
22 pursuant to those in the Blue Card Program established
23 under section 220 of such Act, unless at least 90 days
24 before bringing the action a request has been made to the
25 Federal Mediation and Conciliation Service to assist the
26 parties in reaching a satisfactory resolution of all issues

1 involving all parties to the dispute and mediation has been
2 attempted.”.

3 **Subtitle B—Blue Card Status**

4 **SEC. 721. BLUE CARD PROGRAM.**

5 (a) IN GENERAL.—Chapter 2 of title II of the Immi-
6 gration and Nationality Act (8 U.S.C. 1181 et seq.) is
7 amended by adding at the end the following:

8 “BLUE CARD PROGRAM

9 “SEC. 220. (a) DEFINITIONS.—As used in this sec-
10 tion—

11 “(1) the term ‘agricultural employment’—

12 “(A) means any service or activity that is
13 considered to be agricultural under section 3(f)
14 of the Fair Labor Standards Act of 1938 (29
15 U.S.C. 203(f)) or agricultural labor under sec-
16 tion 3121(g) of the Internal Revenue Code of
17 1986; and

18 “(B) includes any service or activity de-
19 scribed in—

20 “(i) title 37, 37–3011, or 37–3012
21 (relating to landscaping) of the Depart-
22 ment of Labor 2004–2005 Occupational
23 Information Network Handbook;

24 “(ii) title 45 (relating to farming fish-
25 ing, and forestry) of such handbook; or

1 “(iii) title 51, 51–3022, or 51–3023
2 (relating to meat, poultry, fish processors
3 and packers) of such handbook.

4 “(2) the term ‘blue card status’ means the sta-
5 tus of an alien who has been—

6 “(A) lawfully admitted for a temporary pe-
7 riod under subsection (b); and

8 “(B) issued a tamper-resistant, machine-
9 readable document that serves as the alien’s
10 visa, employment authorization, and travel doc-
11 umentation and contains such biometrics as are
12 required by the Secretary;

13 “(3) the term ‘employer’ means any person or
14 entity, including any farm labor contractor and any
15 agricultural association, that employs workers in ag-
16 ricultural employment;

17 “(4) the term ‘Secretary’ means the Secretary
18 of Homeland Security;

19 “(5) the term ‘small employer’ means an em-
20 ployer employing fewer than 500 employees based
21 upon the average number of employees for each of
22 the pay periods for the preceding 10 calendar
23 months, including the period in which the employer
24 employed H–2A workers; and

1 “(6) the term ‘United States worker’ means
2 any worker, whether a United States citizen or na-
3 tional, a lawfully admitted permanent resident alien,
4 or any other alien authorized to work in the relevant
5 job opportunity within the United States, except—

6 “(A) an alien admitted or otherwise pro-
7 vided status under section 101(a)(15)(H)(ii)(a);
8 and

9 “(B) an alien provided status under this
10 section.

11 “(b) BLUE CARD PROGRAM.—

12 “(1) BLUE CARD PROGRAM.—Notwithstanding
13 any other provision of law, the Secretary shall confer
14 blue card status upon an alien who qualifies under
15 this subsection if the Secretary determines that the
16 alien—

17 “(A) has been in the United States con-
18 tinuously as of April 1, 2005;

19 “(B) has performed more than 50 percent
20 of total annual weeks worked in agricultural
21 employment in the United States (except in the
22 case of a child provided derivative status as of
23 April 1, 2005);

1 “(C) is otherwise admissible to the United
2 States under section 212, except as otherwise
3 provided under paragraph (2); and

4 “(D) is the beneficiary of a petition filed
5 by an employer, as described in paragraph (3).

6 “(2) WAIVER OF CERTAIN GROUNDS FOR INAD-
7 MISSIBILITY.—In determining an alien’s eligibility
8 for blue card status under paragraph (1)(C)—

9 “(A) the provisions of paragraphs (5),
10 (6)(A), (7)(A), and (9)(B) of section 212(a)
11 shall not apply;

12 “(B) the provisions of section 212(a)(6)(C)
13 shall not apply with respect to prior or current
14 agricultural employment; and

15 “(C) the Secretary may not waive para-
16 graph (1), (2), or (3) of section 212(a) unless
17 such waiver is permitted under another provi-
18 sion of law.

19 “(3) PETITIONS.—

20 “(A) IN GENERAL.—An employer seeking
21 blue card status under this section for an alien
22 employee shall file a petition for blue card sta-
23 tus with the Secretary.

24 “(B) EMPLOYER PETITION.—An employer
25 filing a petition under subparagraph (A) shall—

1 “(i) pay a registration fee of—

2 “(I) \$1,000, if the employer em-
3 ploys more than 500 employees; or

4 “(II) \$500, if the employer is a
5 small employer employing 500 or
6 fewer employees;

7 “(ii) pay a processing fee to cover the
8 actual costs incurred in adjudicating the
9 petition; and

10 “(iii) attest that the employer con-
11 ducted adequate recruitment in the metro-
12 politan statistical area of intended employ-
13 ment before filing the attestation and was
14 unsuccessful in locating qualified United
15 States workers for the job opportunity for
16 which the certification is sought, which at-
17 testation shall be valid for a period of 60
18 days.

19 “(C) RECRUITMENT.—

20 “(i) The adequate recruitment re-
21 quirement under subparagraph (B)(iii) is
22 satisfied if the employer—

23 “(I) places a job order with
24 America’s Job Bank Program of the
25 Department of Labor; and

1 “(II) places a Sunday advertise-
2 ment in a newspaper of general cir-
3 culation or an advertisement in an ap-
4 propriate trade journal or ethnic pub-
5 lication that is likely to be patronized
6 by a potential worker in the metro-
7 politan statistical area of intended
8 employment.

9 “(ii) An advertisement under clause
10 (i)(II) shall—

11 “(I) name the employer;

12 “(II) direct applicants to report
13 or send resumes, as appropriate for
14 the occupation, to the employer;

15 “(III) provide a description of
16 the vacancy that is specific enough to
17 apprise United States workers of the
18 job opportunity for which certification
19 is sought;

20 “(IV) describe the geographic
21 area with enough specificity to apprise
22 applicants of any travel requirements
23 and where applicants will likely have
24 to reside to perform the job;

1 “(V) state the rate of pay, which
2 must equal or exceed the wage paid
3 for the occupation in the area of in-
4 tended employment; and

5 “(VI) offer wages, terms, and
6 conditions of employment, which are
7 at least as favorable as those offered
8 to the alien.

9 “(D) NOTIFICATION OF DENIAL.—The
10 Secretary shall provide notification of a denial
11 of a petition filed for an alien to the alien and
12 the employer who filed such petition.

13 “(E) EFFECT OF DENIAL.—If the Sec-
14 retary denies a petition filed for an alien, such
15 alien shall return to the country of the alien’s
16 nationality or last residence outside the United
17 States.

18 “(4) BLUE CARD STATUS.—

19 “(A) BLUE CARD.—

20 “(i) ALL-IN-ONE CARD.—The Sec-
21 retary, in conjunction with the Secretary of
22 State, shall develop a single machine-read-
23 able, tamper-resistant document that—

24 “(I) authorizes the alien’s entry
25 into the United States;

1 “(II) serves, during the period an
2 alien is in blue card status, as an em-
3 ployment authorized endorsement or
4 other appropriate work permit for ag-
5 ricultural employment only; and

6 “(III) serves as an entry and exit
7 document to be used in conjunction
8 with a proper visa or as a visa and as
9 other appropriate travel and entry
10 documentation using biometric identi-
11 fiers that meet the biometric identifier
12 standards jointly established by the
13 Secretary of State and the Secretary.

14 “(ii) BIOMETRICS.—

15 “(I) After a petition is filed by
16 an employer and receipt of such peti-
17 tion is confirmed by the Secretary, the
18 alien, in order to further adjudicate
19 the petition, shall submit 2 biometric
20 identifiers, as required by the Sec-
21 retary, at an Application Support
22 Center.

23 “(II) The Secretary shall pre-
24 scribe a process for the submission of
25 a biometric identifier to be incor-

1 porated electronically into an employ-
2 er’s prior electronic filing of a peti-
3 tion. The Secretary shall prescribe an
4 alternative process for employers to
5 file a petition in a manner other than
6 electronic filing, as needed.

7 “(B) DOCUMENT REQUIREMENTS.—The
8 Secretary shall issue a blue card that is—

9 “(i) capable of reliably determining if
10 the individual with the blue card whose eli-
11 gibility is being verified is—

12 “(I) eligible for employment;

13 “(II) claiming the identify of an-
14 other person; and

15 “(III) authorized to be admitted;
16 and

17 “(ii) compatible with—

18 “(I) other databases maintained
19 by the Secretary for the purpose of
20 excluding aliens from benefits for
21 which they are not eligible and deter-
22 mining whether the alien is unlawfully
23 present in the United States; and

1 “(II) law enforcement databases
2 to determine if the alien has been con-
3 victed of criminal offenses.

4 “(C) AUTHORIZED TRAVEL.—During the
5 period an alien is in blue card status granted
6 under this section and pursuant to regulations
7 established by the Secretary, the alien may
8 make brief visits outside the United States. An
9 alien may be readmitted to the United States
10 after such a visit without having to obtain a
11 visa if the alien presents the alien’s blue card
12 document. Such periods of time spent outside
13 the United States shall not cause the period of
14 blue card status in the United States to be ex-
15 tended.

16 “(D) PORTABILITY.—

17 “(i) During the period in which an
18 alien is in blue card status, the alien issued
19 a blue card may accept new employment
20 upon the Secretary’s receipt of a petition
21 filed by an employer on behalf of the alien.
22 Employment authorization shall continue
23 for such alien until such petition is adju-
24 dicated.

1 “(ii) If a petition filed under clause (i)
2 is denied and the alien has ceased employ-
3 ment with the previous employer, the au-
4 thorization under clause (i) shall terminate
5 and the alien shall be required to return to
6 the country of the alien’s nationality or
7 last residence.

8 “(iii) A fee may be required by the
9 Secretary to cover the actual costs incurred
10 in adjudicating a petition under this sub-
11 paragraph. No other fee may be required
12 under this subparagraph.

13 “(iv) A petition by an employer under
14 this subparagraph may not be accepted
15 within 90 days after the adjudication of a
16 previous petition on behalf of an alien.

17 “(E) ANNUAL CHECK IN.—The employer
18 of an alien in blue card status who has been
19 employed for 1 year in blue card status shall
20 confirm the alien’s continued employment sta-
21 tus with the Secretary electronically or in writ-
22 ing. Such confirmation will not require a fur-
23 ther labor attestation.

24 “(F) TERMINATION OF BLUE CARD STA-
25 TUS.—

1 “(i) During the period of blue card
2 status granted an alien, the Secretary may
3 terminate such status upon a determina-
4 tion by the Secretary that the alien is de-
5 portable or has become inadmissible.

6 “(ii) The Secretary may terminate
7 blue card status granted to an alien if—

8 “(I) the Secretary determines
9 that, without the appropriate waiver,
10 the granting of blue card status was
11 the result of fraud or willful misrepre-
12 sentation (as described in section
13 212(a)(6)(C)(i));

14 “(II) the alien is convicted of a
15 felony or a misdemeanor committed in
16 the United States; or

17 “(III) the Secretary determines
18 that the alien is deportable or inad-
19 missible under any other provision of
20 this Act.

21 “(5) PERIOD OF AUTHORIZED ADMISSION.—

22 “(A) IN GENERAL.—The initial period of
23 authorized admission for an alien with blue
24 card status shall be not more than 3 years. The
25 employer of such alien may petition for exten-

1 sions of such authorized admission for 2 addi-
2 tional periods of not more than 3 years each.

3 “(B) EXCEPTION.—The limit on renewals
4 shall not apply to a nonimmigrant in a position
5 of full-time, non-temporary employment who
6 has managerial or supervisory responsibilities.
7 The employer of such nonimmigrant shall be re-
8 quired to make an additional attestation to
9 such an employment classification with the fil-
10 ing of a petition.

11 “(C) REPORTING REQUIREMENT.—If an
12 alien with blue card status ceases to be em-
13 ployed by an employer, such employer shall im-
14 mediately notify the Secretary of such cessation
15 of employment. The Secretary shall provide
16 electronic means for making such notification.

17 “(D) LOSS OF EMPLOYMENT.—

18 “(i) An alien’s blue card status shall
19 terminate if the alien is unemployed for 60
20 or more consecutive days.

21 “(ii) An alien whose period of author-
22 ized admission terminates under clause (i)
23 shall be required to return to the country
24 of the alien’s nationality or last residence.

25 “(6) GROUNDS FOR INELIGIBILITY.—

1 “(A) BAR TO FUTURE VISAS FOR CONDI-
2 TION VIOLATIONS.—Any alien having blue card
3 status shall not again be eligible for the same
4 blue card status if the alien violates any term
5 or condition of such status.

6 “(B) ALIENS UNLAWFULLY PRESENT.—
7 Any alien who enters the United States after
8 April 1, 2005, without being admitted or pa-
9 roled shall be ineligible for blue card status.

10 “(C) ALIENS IN H-2A STATUS.—Any alien
11 in lawful H-2A status as of April 1, 2005, shall
12 be ineligible for blue card status.

13 “(7) BAR ON CHANGE OR ADJUSTMENT OF STA-
14 TUS.—

15 “(A) IN GENERAL.—An alien having blue
16 card status shall not be eligible to change or
17 adjust status in the United States or obtain a
18 different nonimmigrant or immigrant visa from
19 a United States Embassy or consulate.

20 “(B) LOSS OF ELIGIBILITY.—An alien hav-
21 ing blue card status shall lose eligibility for
22 such status if the alien—

23 “(i) files a petition to adjust status to
24 legal permanent residence in the United
25 States; or

1 “(ii) requests a consular processing
2 for an immigrant visa outside the United
3 States.

4 “(C) EXCEPTION.—An alien having blue
5 card status may not adjust status to legal per-
6 manent resident status or obtain another non-
7 immigrant or immigrant status unless—

8 “(i)(I) the alien renounces his or her
9 blue card status by providing written noti-
10 fication to the Secretary of Homeland Se-
11 curity or the Secretary of State; or

12 “(II) the alien’s blue card status oth-
13 erwise expires; and

14 “(ii) the alien has resided and been
15 physically present in the alien’s country of
16 nationality or last residence for not less
17 than 1 year after leaving the United States
18 and the renouncement or expiration of blue
19 card status.

20 “(8) JUDICIAL REVIEW.—There shall be no ju-
21 dicial review of a denial of blue card status.

22 “(c) SAFE HARBOR.—

23 “(1) SAFE HARBOR OF ALIEN.—An alien for
24 whom a nonfrivolous petition is filed under this sec-
25 tion—

1 “(A) shall be granted employment author-
2 ization pending final adjudication of the peti-
3 tion;

4 “(B) may not be detained, determined in-
5 admissible or deportable, or removed pending
6 final adjudication of the petition for change in
7 status, unless the alien commits an act which
8 renders the alien ineligible for such change of
9 status; and

10 “(C) may not be considered an unauthor-
11 ized alien as defined in section 274A(h)(3) until
12 such time as the petition for status is adju-
13 dicated.

14 “(2) SAFE HARBOR FOR EMPLOYER.—An em-
15 ployer that files a petition for blue card status for
16 an alien shall not be subject to civil and criminal tax
17 liability relating directly to the employment of such
18 alien. An employer that provides unauthorized aliens
19 with copies of employment records or other evidence
20 of employment pursuant to the petition shall not be
21 subject to civil and criminal liability pursuant to sec-
22 tion 274A for employing such unauthorized aliens.

23 “(d) TREATMENT OF SPOUSES AND CHILDREN.—

24 “(1) SPOUSES.—A spouse of an alien having
25 blue card status shall not be eligible for derivative

1 status by accompanying or following to join the
2 alien. Such a spouse may obtain status based only
3 on an independent petition filed by an employer peti-
4 tioning under subsection (b)(3) with respect to the
5 employment of the spouse.

6 “(2) CHILDREN.—A child of an alien having
7 blue card status shall not be eligible for the same
8 temporary status unless—

9 “(A) the child is accompanying or fol-
10 lowing to join the alien; and

11 “(B) the alien is the sole custodial parent
12 of the child or both custodial parents of the
13 child have obtained such status.”.

14 (b) CLERICAL AMENDMENT.—The table of contents
15 of the Immigration and Nationality Act is amended by in-
16 serting after the item relating to section 219 the following:

“Sec. 220. Blue card program.”.

17 **SEC. 722. PENALTIES FOR FALSE STATEMENTS.**

18 Section 1546 of title 18, United States Code, is
19 amended—

20 (1) by redesignating subsection (c) as sub-
21 section (d); and

22 (2) by inserting after subsection (b) the fol-
23 lowing:

24 “(c) Any person, including the alien who is the bene-
25 ficiary of a petition, who—

1 “(1) files a petition under section 220(b)(3) of
2 the Immigration and Nationality Act; and

3 “(2)(A) knowingly and willfully falsifies, con-
4 ceals, or covers up a material fact related to such a
5 petition;

6 “(B) makes any false, fictitious, or fraudulent
7 statements or representations, or makes or uses any
8 false writing or document knowing the same to con-
9 tain any false, fictitious, or fraudulent statement or
10 entry related to such a petition; or

11 “(C) creates or supplies a false writing or docu-
12 ment for use in making such a petition,

13 shall be fined in accordance with this title, imprisoned not
14 more than 5 years, or both.”.

15 **SEC. 723. SECURING THE BORDERS.**

16 Not later than 6 months after the date of enactment
17 of this Act, the Secretary of Homeland Security shall sub-
18 mit to Congress a comprehensive plan for securing the
19 borders of the United States.

20 **SEC. 724. EFFECTIVE DATE.**

21 This subtitle shall take effect on the date that is 6
22 months after the date of enactment of this Act.